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# Anti-Corruption Efforts in South Africa



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## Introduction

**A**s in many countries, the public sector in South Africa is wrestling with the implications of a move from purely compliance-based public management to an approach that emphasizes results, or output. A consequent concern is that efficiency improvements should not be achieved at the expense of high ethical standards.

While enhanced regulation and stricter law enforcement have been the usual response to misconduct and corruption in the public sector, South Africa, like other countries, is experimenting with a significant reorientation to administrative and preventive action as adjuncts to the limitations of law enforcement in an increasingly sophisticated public sector.

A values-based approach alone, however, is inadequate: corruption is as much about systems as about individual conduct. Hence, codes of conduct, administrative law mechanisms, whistle-blower protection, effective auditing, monitoring and law enforcement systems, and training in and support of ethical conduct are essential components of an ethical environment. In addition, prevention and control through actual implementation is vital.

The new Constitution of 1996 committed South Africa to implementing an ethical, accountable and democratic system of governance. However, this commitment was made against an historical background of various self-governing entities which were incorporated into one, where at least some of these entities previously relied on centralised political control which actively sought to quarantine government from scrutiny and oversight. Legislative and administrative measures are being implemented to transform this inheritance.

The Department of Public Service and Administration is leading the process of transformation from within the public service. It is complemented by the Public Service Commission, which is tasked by the Constitution with monitoring and evaluating this transformation, and by the Parliamentary Portfolio Committee on Public Service and Administration, which plays an oversight role.

## The Approach of the South African Government

In the past few years, the government has taken several significant steps not only to ensure a clean public administration system but also to signal its intention to be responsive to local and international pressure and encouragement towards good governance, and to promote greater openness, transparency and accountability. Both the Mandela and

Mbeki presidencies have directly confronted the need to address the 'moral crisis' evident in unacceptable levels of violent and other crime, and in pervasive levels of corruption among public servants acting in furtherance of personal interests.

The National Anti-Corruption Initiative was launched in 1999 following a number of landmark events:

- the Moral Summit in October 1998, where religious and other leaders adopted a code of conduct and a pledge of 'ubuntu' or 'common humanity';
- the Public Sector Anti-Corruption Conference in November 1998, convened to propel a plan of action to prevent and control corruption in the public sector;
- the National Anti-Corruption Summit, held in April 1999, that produced a detailed resolution setting out essential elements of a national plan to control and prevent corruption; and
- the 1994 King Committee Report on Corporate Governance, amendments to which are currently (July 2001) under consideration.

Following the Summit, President Mbeki's Cabinet formally endorsed the resolution and nominated the Public Service Commission to lead the national anti-corruption effort. The Commission has since convened a cross-sectoral task team to manage the national programme. The cross-sectoral team proposed the creation of a non-statutory National Anti-Corruption Forum, which was launched in June 2001 as the formal national structure with the authority to:

- contribute towards the establishment of a national consensus through the co-ordination of sectoral strategies against corruption;
- advise Government on national initiatives on the implementation of strategies to combat corruption;
- share information and best practice on sectoral anti-corruption work; and
- advise sectors on the improvement of sectoral anti-corruption strategies.

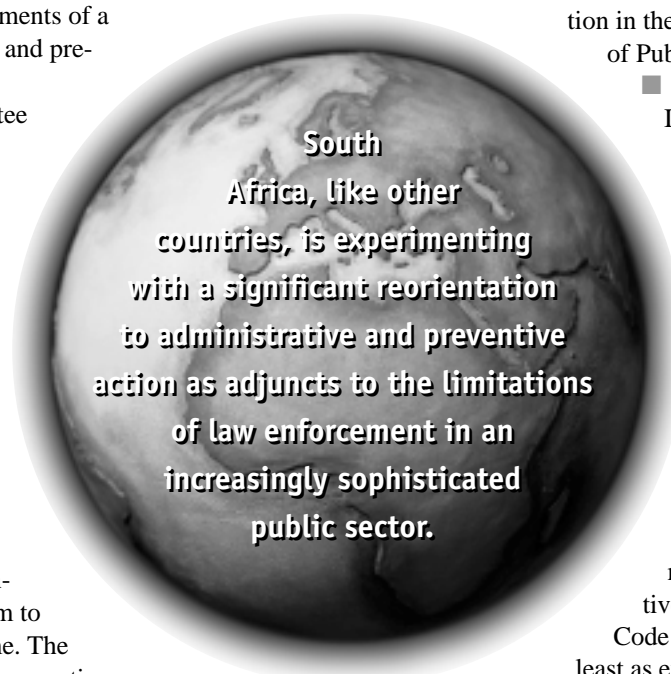
The Forum consists of thirty (30) members on the basis of ten (10) representatives from each of the sectors

envisaged in the resolutions of the National Anti-Corruption Summit.

## Legislative and Administrative Measures

Other targeted legislative and administrative measures include:

- The establishment of constitutionally independent bodies such as the Auditor-General and the Public Protector (national parliamentary ombudsman).
- The Special Investigative Unit, which does, however, require a Presidential Proclamation before investigating and recovering by civil remedies misappropriated public monies.
- The Investigating Directorate on Corruption in the office of the National Director of Public Prosecutions.
- The recent establishment of Inspectors-General within certain state departments, including the military, and the police and intelligence services.
- The passing of the Executive Members' Ethics Act and its Code of Conduct governing the conduct of and disclosure of interests by members of the Cabinet, including the President and Deputy-President; Deputy Ministers; and members of Provincial Executive Councils (Cabinets). The Code requires a level of disclosure at least as extensive as that required of Members of Parliament.
- The Code of Conduct for public servants contained in Chapter M of the Public Service Regulations, which governs relationships with the legislature, executive, public, colleagues, as well as performance, personal conduct and disclosure of private interests.
- The service contracts of heads of government departments (and soon their senior officials) require them to disclose their financial interests.
- The Public Service and Administration Minister has recently proposed the regulation of private employment by senior government employees after resignation from the public service.
- The recent enactment of (1) the Protected Disclosures Act to protect whistle-blowers in the public and private sectors, albeit only when in an employer/employee relationship. (Parliament's Jus-



tice Portfolio Committee has requested the South African Law Commission to examine ways to expand the ambit of this legislation); (2) the Promotion of Access to Information Act, applicable in both the public and private sectors; and (3) the Administrative Justice Act. The latter two statutes go a long way to ensure public sector transparency and accountability.

- The new Public Finance Management Act significantly enhances clarity concerning the responsibility of designated accounting officers for the management of public finances.
- Public sector procurement reform is currently under way, with detailed anti-corruption mechanisms proposed in conformity with international best practice.

## Developments in the Private Sector

One of the challenges facing South Africa is the move to deregulation and privatization. While this may have the effect of reducing corruption in the public sector, *inter alia* by increasing competition, it may also simply remove corruption from a relatively regulated domain to an ethically less manageable environment – the private sector. Hence, the importance of initiatives outside the public sector to create an awareness of and sensitivity to the negative impact of corruption on society, and on the poor particularly.

Recent developments include:

- Private business is currently engaged in a number of good governance initiatives, including the implementation of the recently proposed business code, SANCODE, and the revision and updating of the King Code, mentioned earlier.
- South African religious bodies have established the Church-Community Leadership Trust that has launched a programme entitled NEED, the National Engagement for Ethics Development.
- Civil society, which includes several active and influential anti-corruption non-governmental organisations, such as the Institute for Security Studies (ISS), the Institute for Democracy in South Africa (IDASA), Transparency International—South Africa (TI-SA), the Public Service Accountability Monitor (PSAM) and others, has recently adopted the South African NGO Coalition (SANGOCO) Code of Conduct, aimed at enhancing their own internal ethical standards.
- Professional codes, such as in the accounting, auditing and legal fields, are undergoing extensive review, or are under pressure to do so.

## The Role of the Public Protector

The Public Protector of South Africa is in essence an ombudsman in the classical sense of the word. In terms of

section 182(1) of the Constitution of the Republic of South Africa Act 108 of 1996, the Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice.

The Public Protector has been involved in, or supportive of, many of the developments regarding the anti-corruption efforts described above. This was in furtherance of the constitutional injunction that the Public Protector is an institution to strengthen constitutional democracy in South Africa (see section 181(1) of the Constitution, 1996).

Of course the main contribution of the Public Protector is that of investigating, reporting and taking appropriate remedial action, mostly by way of recommendations. To give more detail on how the Public Protector responds when requested to investigate corruption, it becomes necessary to get a clearer understanding of this nebulous term. For present purposes it is convenient to distinguish the following “types” of corruption:

- Criminal corruption, where the perpetrator can be prosecuted. The term is wide enough to include crimes like the taking of bribes, fraud or theft.
- Corruption in the ethical sense, where the act does not constitute a crime, but is nevertheless unethical or in contravention of, for example, a code of conduct.
- Corruption in the sense of a system not working or disintegrating because of, for example, incompetence or negligence.

As far as criminal corruption is concerned, the usual reaction to a complaint received by the Public Protector would be to refer the matter to the police or prosecuting authorities who are the appropriate institutions to deal with it. In his role as a receptacle for complaints from members of the public, the Public Protector often gets criminal corruption reported to it. However, the Public Protector has an important secondary role to play where the criminal corruption is the result of maladministration within the exploited state institution. In this regard the perfect example would be a recently concluded investigation of the Public Protector into corruption with regard to state subsidies paid for sub-economic housing. It had been reported that private contractors are misappropriating such subsidies without providing proper housing in return. The Public Protector launched an investigation into the matter, but brought in the Director of Public Prosecutions to deal with the fraud investigations. The Public Protector concentrated his investigation on the procedures for the payment of subsidies in the relevant provincial housing department, and on the adherence to such procedures, with the aim to prevent similar crimes in future.

As far as corruption in the ethical sense is concerned, reference has already been made above to a number of

binding codes of conduct in the public sector. Such codes are of enormous normative importance in that they constitute a public commitment to ethical governance. They also provide a concrete measure for determining what constitutes unacceptable conduct. National legislation has made the Office of the Public Protector one of the enforcement mechanisms with regard to some of these codes. An example of the type of investigation one will encounter in this area, would be the one where an opposition party made allegations of widespread nepotism when it comes to the appointment of senior government officials. The conclusion of the Public Protector after investigating was that the allegations could not be substantiated. However, in one case a Minister concerned came in for criticism by the Public Protector for the way he had dealt with a specific appointment.

Regarding the third use of the word corruption, it is often found that prejudice to a complainant to the Public Protector is caused by the breakdown of a system, or sometimes just the overload of a system. An example would be where the Public Service offered early retirement packages to its officials in an effort to transform itself. After a while complaints started streaming into the office of the Public Protector from public servants who took early retirement, but who were not receiving their pensions. On investigation it turned out that the department responsible for the processing of pensions payouts were not able to deal expeditiously with the extra workload brought about by these early retirements. The Public Protector was instrumental in having the work contracted out to the private sector to solve the delay.

## Conclusion

It is difficult, between sensational journalism and political point scoring based on allegations and not findings, to ascertain the precise extent of corruption in South Africa. That it does occur at unacceptable levels, however, is not to be denied, as experience in the office of the Public Protector indicates. South Africa is rallying to tackle corruption in all its forms through various means. When the general public refer to a corruption-fighting agency, one would not classify the Public Protector as such, as opposed to, for example, the Investigating Directorate on Corruption of the prosecuting authority. However, it is not to be denied that the Public Protector has an important role to play when it comes to anti-corruption (in the broad sense of the word) efforts and that his remit does accommodate such a role.

It has been said that corruption is widespread in developing and transition economies, not because their people are different from people elsewhere but because conditions are ripe (World Bank Report, Number 4, May 1998). This is true in some cases where one has to bribe his way into the country concerned, bribe his way during his stay and bribe his way out. South Africa is not such a country. The South African public administration is reasonably efficient, functional and effective. There is accordingly a reasonable chance that the efforts which have been referred to above will pay off handsomely in the not too distant future, be it in social, economic or even political terms. 🏠

